



Reprinted
February 17, 2009

HOUSE BILL No. 1266

DIGEST OF HB 1266 (Updated February 16, 2009 4:28 pm - DI 75)

Citations Affected: IC 3-11; IC 3-11.7.

Synopsis: Notice to voters regarding provisional ballots. Requires a precinct election officer, in the case of a voter who casts a provisional ballot, or an absentee voter board, in the case of a voter who casts an absentee ballot that is treated as a provisional ballot, to provide both orally and in writing an explanation of the steps the voter must take in order to have the voter's ballot counted. Requires the election commission to prescribe the form of the explanation. Requires the circuit court clerk of a county that conducts an election in which a voter casts a provisional ballot or an absentee ballot that is treated as a provisional ballot to notify the voter not later than three days after election day concerning: (1) the reasons that the voter's ballot is being treated as a provisional ballot; (2) what actions, if any, that the voter must take in order to have the voter's ballot counted; (3) the deadline by which the voter must act to have the voter's ballot counted; and (4) certain contact information that the provisional voter may use to find out about the provisional voter's ballot. Requires that the notice be sent by first class United States mail or given by another method that the circuit court clerk determines will provide actual notice to the voter. Requires the notice to be in a form prescribed by the election commission. Requires the county election board to provide a list of the name and addresses of all voters who cast a provisional ballot at an election to a candidate whose name was on the ballot or the county chairman of a political party in the county not later than 72 hours after the request. Requires the circuit court clerk and the secretary of state to compile and make public certain information about provisional voting.

Effective: July 1, 2009.

Avery, Battles, Barnes, Richardson

January 13, 2009, read first time and referred to Committee on Elections and Apportionment.
February 12, 2009, amended, reported — Do Pass.
February 16, 2009, read second time, amended, ordered engrossed.

HB 1266—LS 7059/DI 102+



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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1266

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-11-3-11, AS AMENDED BY P.L.230-2005,
2 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 11. The county election board shall deliver the
4 following to each inspector or the inspector's representative:

5 (1) The supplies provided for the inspector's precinct by the
6 election division.

7 (2) The local sample ballots, the ballot labels, if any, and all poll
8 lists, registration lists, and other supplies considered necessary to
9 conduct the election in the inspector's precinct.

10 (3) The local ballots printed under the direction of the county
11 election board as follows:

12 (A) In those precincts where ballot card voting systems are to
13 be used, the number of ballots at least equal to one hundred
14 percent (100%) of the number of voters in the inspector's
15 precinct, according to the poll list.

16 (B) In those precincts where electronic voting systems are to
17 be used, the number of ballots that will be required to be

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printed and furnished to the precincts for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

(4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.

(5) Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.

(6) Copies of the instructions for a provisional voter required by 42 U.S.C. 15482 **and IC 3-11.7-2-2**. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under subdivision (3).

SECTION 2. IC 3-11-8-25.2, AS AMENDED BY P.L.164-2006, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25.2. (a) The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in person, the poll clerk shall advise the voter that the voter must present, in addition to the proof of identification required by section 25.1(a) of this chapter, a piece of identification described in subsection (b) to the poll clerk.

(b) As required by 42 U.S.C. 15483, and in addition to the proof of identification required by section 25.1(a) of this chapter, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5 before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

(1) A current and valid photo identification.

(2) A current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

(c) If a voter presents a document under subsection (b), the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

(d) If a voter required to present documentation under subsection (b) is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The

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board shall provide a provisional ballot to the voter under IC 3-11.7-2.

(e) The precinct election board shall advise the voter, **both orally and in writing**, that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11.7.

(f) The circuit court clerk shall provide the notice required by IC 3-11.7-6-4 to a voter who casts a provisional ballot under this section.

SECTION 3. IC 3-11-10-26, AS AMENDED BY P.L.164-2006, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) As an alternative to voting by mail, a voter is entitled to cast an absentee ballot before an absentee voter board:

(1) in the office of the circuit court clerk (or board of elections and registration in a county subject to IC 3-6-5.2); or

(2) at a satellite office established under section 26.3 of this chapter.

(b) The voter must:

(1) sign an application on the form prescribed by the commission under IC 3-11-4-5.1; and

(2) provide proof of identification;

before being permitted to vote. The application must be received by the circuit court clerk not later than the time prescribed by IC 3-11-4-3.

(c) The voter may vote before the board not more than twenty-nine (29) days nor later than noon on the day before election day.

(d) An absent uniformed services voter who is eligible to vote by absentee ballot in the circuit court clerk's office under IC 3-7-36-14 may vote before the board not earlier than twenty-nine (29) days before the election and not later than noon on election day. If a voter described by this subsection wishes to cast an absentee ballot during the period beginning at noon on the day before election day and ending at noon on election day, the county election board or absentee voter board may receive and process the ballot at a location designated by resolution of the county election board.

(e) The absentee voter board in the office of the circuit court clerk must permit voters to cast absentee ballots under this section for at least seven (7) hours on each of the two (2) Saturdays preceding election day.

(f) Notwithstanding subsection (e), in a county with a population of less than twenty thousand (20,000), the absentee voter board in the office of the circuit court clerk, with the approval of the county election board, may reduce the number of hours available to cast absentee

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ballots under this section to a minimum of four (4) hours on each of the two (2) Saturdays preceding election day.

(g) As provided by 42 U.S.C. 15481, a voter casting an absentee ballot under this section must be:

- (1) permitted to verify in a private and independent manner the votes selected by the voter before the ballot is cast and counted;
- (2) provided with the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and
- (3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

(h) As provided by 42 U.S.C. 15481, when an absentee ballot is provided under this section, the board must also provide the voter with:

- (1) information concerning the effect of casting multiple votes for an office; and
- (2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

(i) If:

- (1) the voter is unable or declines to present the proof of identification; or
- (2) a member of the board determines that the proof of identification provided by the voter does not qualify as proof of identification under IC 3-5-2-40.5;

the voter shall be permitted to cast an absentee ballot and the voter's absentee ballot shall be treated as a provisional ballot.

(j) This subsection applies to a voter who casts an absentee ballot that is treated as a provisional ballot under subsection (i). The board shall provide the voter, both orally and in writing, an explanation of what actions, if any, the voter must take in order to have the voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the voter.

SECTION 4. IC 3-11.7-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A provisional voter shall do the following:

- (1) Mark the ballot in the presence of no other person, unless the voter requests help in marking a ballot under IC 3-11-9.
- (2) Fold each ballot separately.

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(3) Fold each ballot so as to conceal the marking.

(4) Enclose each ballot, with the seal and signature of the circuit court clerk on the outside, together with any unused ballot, in the envelope provided by the county election board under IC 3-11.7-1-8.

(5) Securely seal the envelope.

(b) A provisional voter may mark a ballot with a pen or a lead pencil.

(c) This subsection applies to a provisional voter described in section 1(a)(1), 1(a)(2), or 1(a)(3) of this chapter. As provided by 42 U.S.C. 15482, a precinct election officer shall give the provisional voter a copy of the written instructions prescribed by the county election board under IC 3-11.7-6-3 after the voter returns the envelope containing the provisional voter's ballots.

(d) This subsection applies to a provisional voter described in section 1(a) or 1(b) of this chapter. In addition to the written instructions required by subsection (c), a precinct election officer shall provide the provisional voter, both orally and in writing, an explanation of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the provisional voter.

SECTION 5. IC 3-11.7-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As required by 42 U.S.C. 15482, a county election board shall establish a free access system such as a toll-free telephone number or an Internet web site that enables a provisional voter to determine:

- (1) whether the individual's provisional ballot was counted; and
- (2) if the provisional ballot was not counted, the reason the provisional ballot was not counted.

(b) As required by 42 U.S.C. 15482, the county election board shall establish and maintain reasonable procedures to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used on the free access system established by the board under subsection (a).

(c) As required by 42 U.S.C. 15482, the county election board shall restrict access to the information available under subsection (a) about a provisional voter's ballot to the individual who cast the ballot.

(d) The county election board shall prescribe written instructions to inform a provisional voter how the provisional voter can determine whether the provisional voter's ballot has been counted.

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(e) Notwithstanding subsections (b) and (c), the county election board shall provide to the following, upon request, a list of the name and address of all voters who have cast a provisional ballot in an election held in the county:

(1) A candidate whose name was on the ballot in the county at the election.

(2) The county chairman of a political party of the county in which the election was held.

The county election board shall provide a list requested under this subsection not later than seventy-two (72) hours after the time the list is requested.

SECTION 6. IC 3-11.7-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) This section applies to a county that conducts an election in which a voter:

(1) casts a provisional ballot under IC 3-11-8-25.2 or IC 3-11.7-2-2; or

(2) casts an absentee ballot that is being treated as a provisional ballot under IC 3-11-10-26.

(b) Not later than three (3) calendar days after election day, the circuit court clerk shall provide a notice containing the following information to each voter described in subsection (a):

(1) The reason or reasons that the voter's ballot is being treated as a provisional ballot.

(2) A description of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted under this article.

(3) The deadlines by which the provisional voter is required to take any actions described in subdivision (2) in order to have the provisional voter's ballot counted under this article.

(4) The following information that will enable the provisional voter to inquire about the provisional voter's ballot:

(A) The name of the office that the provisional voter may contact.

(B) The address of the office described in clause (A).

(C) The telephone number at the office described in clause (A) that the voter may use to contact the office about the voter's provisional ballot.

(D) Any other information that circuit court clerk considers useful to provide assistance to the provisional voter in inquiring about the provisional ballot.

(c) The notice required by subsection (b) must be:

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(1) sent by first class United States mail; or

(2) given by another method that the circuit court clerk determines will provide actual notice to the voter.

(d) The notice required by subsection (b) must be in a form prescribed by the commission.

SECTION 7. IC 3-11.7-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Not later than thirty (30) days after an election, the circuit court clerk shall compile a report that includes the following information:

(1) The number of provisional ballots cast at the election in the county.

(2) The following information relating to the provisional ballots cast:

(A) A list of the reasons that provisional ballots were cast.

(B) For each reason listed, the number of provisional ballots cast for that reason.

(3) The number of provisional ballots counted for that election.

(4) The following information relating to the provisional ballots that were not counted:

(A) A list of reasons that provisional ballots were not counted.

(B) For each reason listed, the number of provisional ballots not counted for that reason.

(b) The circuit court clerk shall:

(1) make the report available for public inspection and copying under IC 5-14-3; and

(2) send a copy of the report to the secretary of state.

(c) The secretary of state shall compile the reports sent by the circuit court clerks under subsection (b). Not later than December 31 of each year, the secretary of state shall issue a statewide compilation of all the reports sent to the secretary of state under subsection (b). The statewide compilation must include the following information:

(1) All the information contained in the county reports, by county.

(2) Statewide totals for each item of information required to be contained in the county reports under subsection (a).

(d) The secretary of state shall make the statewide compilation available for public inspection and copying under IC 5-14-3.

(e) The secretary of state shall develop uniform descriptions of

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1 the following information required to be compiled under
2 subsection (a):

3 (1) The reasons that a provisional ballot is cast.

4 (2) The reasons that a provisional ballot is not counted.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred House Bill 1266, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, between lines 5 and 6, begin a new paragraph and insert:

"(f) The circuit court clerk shall provide the notice required by IC 3-11.7-6-4 to a voter who casts a provisional ballot under this section."

Page 4, delete lines 26 through 31, begin a new paragraph and insert:

"(j) This subsection applies to a voter who casts an absentee ballot that is treated as a provisional ballot under subsection (i). The board shall provide the voter, both orally and in writing, an explanation of what actions, if any, the voter must take in order to have the voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the voter."

Page 5, delete lines 10 through 16, begin a new paragraph and insert:

"(d) This subsection applies to a provisional voter described in section 1(a) or 1(b) of this chapter. In addition to the written instructions required by subsection (c), a precinct election officer shall provide the provisional voter, both orally and in writing, an explanation of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the provisional voter."

SECTION 5. IC 3-11.7-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section applies to a county that conducts an election in which a voter:**

- (1) casts a provisional ballot under IC 3-11-8-25.2 or IC 3-11.7-2-2; or**
- (2) casts an absentee ballot that is being treated as a provisional ballot under IC 3-11-10-26.**

(b) Not later than three (3) calendar days after election day, the circuit court clerk shall provide a notice containing the following information to each voter described in subsection (a):

- (1) The reason or reasons that the voter's ballot is being**

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treated as a provisional ballot.

(2) A description of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted under this article.

(3) The deadlines by which the provisional voter is required to take any actions described in subdivision (2) in order to have the provisional voter's ballot counted under this article.

(4) The name, job title, address, and telephone number of an individual whom the provisional voter may contact for additional information regarding the provisional voter's ballot.

(c) The notice required by subsection (b) must be:

(1) sent by first class United States mail; or

(2) given by another method that the circuit court clerk determines will provide actual notice to the voter.

(d) The notice required by subsection (b) must be in a form prescribed by the commission.

(e) A circuit court clerk who knowingly omits to provide the notice required by subsection (b) commits a Class D felony under IC 3-14-4-3."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1266 as introduced.)

BATTLES, Chair

Committee Vote: yeas 7, nays 3.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1266 be amended to read as follows:

Page 5, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 5. IC 3-11.7-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As required by 42 U.S.C. 15482, a county election board shall establish a free access system such as a toll-free telephone number or an Internet web site that enables a provisional voter to determine:

(1) whether the individual's provisional ballot was counted; and

(2) if the provisional ballot was not counted, the reason the provisional ballot was not counted.

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(b) As required by 42 U.S.C. 15482, the county election board shall establish and maintain reasonable procedures to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used on the free access system established by the board under subsection (a).

(c) As required by 42 U.S.C. 15482, the county election board shall restrict access to the information available under subsection (a) about a provisional voter's ballot to the individual who cast the ballot.

(d) The county election board shall prescribe written instructions to inform a provisional voter how the provisional voter can determine whether the provisional voter's ballot has been counted.

(e) Notwithstanding subsections (b) and (c), the county election board shall provide to the following, upon request, a list of the name and address of all voters who have cast a provisional ballot in an election held in the county:

- (1) A candidate whose name was on the ballot in the county at the election.**
- (2) The county chairman of a political party of the county in which the election was held.**

The county election board shall provide a list requested under this subsection not later than seventy-two (72) hours after the time the list is requested."

Page 6, after line 13, begin a new paragraph and insert:

"SECTION 7. IC 3-11.7-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Not later than thirty (30) days after an election, the circuit court clerk shall compile a report that includes the following information:

- (1) The number of provisional ballots cast at the election in the county.**
- (2) The following information relating to the provisional ballots cast:**
 - (A) A list of the reasons that provisional ballots were cast.**
 - (B) For each reason listed, the number of provisional ballots cast for that reason.**
- (3) The number of provisional ballots counted for that election.**
- (4) The following information relating to the provisional ballots that were not counted:**
 - (A) A list of reasons that provisional ballots were not counted.**
 - (B) For each reason listed, the number of provisional**

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ballots not counted for that reason.

(b) The circuit court clerk shall:

(1) make the report available for public inspection and copying under IC 5-14-3; and

(2) send a copy of the report to the secretary of state.

(c) The secretary of state shall compile the reports sent by the circuit court clerks under subsection (b). Not later than December 31 of each year, the secretary of state shall issue a statewide compilation of all the reports sent to the secretary of state under subsection (b). The statewide compilation must include the following information:

(1) All the information contained in the county reports, by county.

(2) Statewide totals for each item of information required to be contained in the county reports under subsection (a).

(d) The secretary of state shall make the statewide compilation available for public inspection and copying under IC 5-14-3.

(e) The secretary of state shall develop uniform descriptions of the following information required to be compiled under subsection (a):

(1) The reasons that a provisional ballot is cast.

(2) The reasons that a provisional ballot is not counted."

Renumber all SECTIONS consecutively.

(Reference is to HB 1266 as printed February 13, 2009.)

DELANEY

HOUSE MOTION

Mr. Speaker: I move that House Bill 1266 be amended to read as follows:

Page 6, delete lines 1 through 4, begin a new line block indented and insert:

"(4) The following information that will enable the provisional voter to inquire about the provisional voter's ballot:

(A) The name of the office that the provisional voter may contact.

(B) The address of the office described in clause (A).

(C) The telephone number at the office described in clause

(A) that the voter may use to contact the office about the voter's provisional ballot.

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(D) Any other information that circuit court clerk considers useful to provide assistance to the provisional voter in inquiring about the provisional ballot."

Page 6, delete lines 11 through 13.

(Reference is to HB 1266 as printed February 13, 2009.)

RICHARDSON

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